

Cheltenham Borough Council Licensing Sub-Committee - Miscellaneous Minutes

Meeting date: 9 August 2023

Meeting time: 6.00 pm - 10.30 pm

In attendance:

Councillors:

Councillor Dr David Willingham (Chair), Councillor Ed Chidley, Councillor Julie Sankey (Reserve) and Councillor Tim Harman (Reserve) Councillor Richard Pineger

Also in attendance:

Phil Bowen (Senior Licensing Officer), Vikki Fennell (Solicitor) and Jason Kirkwood (Licensing Team Leader)

1 Apologies

Apologies were received from Councillors Seacome, Boyes and Wheeler. Councillors Harman, Sankey and Pineger were present as substitutes.

2 Declarations of Interest

Councillor Willingham declared a personal and prejudicial interest in Agenda item 8; Councillor Harman will take the chair for this item.

Councillor Willingham also advised that he had visited the site of Agenda item 3, noting that most Members will be familiar with this due to its proximity to the Municipal Offices.

3 Application for a Street Vending Consent

The Chair explained the process, and invited the Senior Licensing Officer to introduce his report. He confirmed this new application for a street trading consent

on the corner of Pittville Street, with proposed times set out in the report, together with an image of the horsebox. There have been three objections, one on behalf of Cheltenham BID, and Environmental Health officers have raised concern about the potential trip hazard created by the tow bar. Member must decide whether the proposed location is suitable or does not comply with the council's street trading policy.

In response to Members' questions, he confirmed that:

- although Environmental Health officers have raised concern about the tow bar creating a trip hazard for the partially sighted, they have not objected to the proposal;
- he is unaware of the environmental credentials of the horsebox, but the applicant should be able to provide information on this.

Speaker, in objection

On behalf of Cheltenham BID, the speaker made the following points:

- there are 27 businesses selling take-away coffee as a core product in the town centre, and 39 selling coffee in addition to their core offering;
- CBC's street-trading policy requires street traders to sustain and complement existing shop traders, but this proposal will take away from them and, without business rates and energy costs, will have an unfair advantage in a competitive market;
- street traders should add to the mix – the former occupier of this site was The Flower Man, which didn't conflict with any local businesses;
- BID businesses are particularly concerned, currently struggling with a difficult trading environment as a result of increased energy bills, the cost of living crisis, and high staffing costs.

Applicants, in support

The applicants began by saying they do not have a commercial background, but having seen reports about the increased footfall in Cheltenham and positive national figures regarding the sale of take-away coffee, they decided to invest in the horsebox. They said that:

- it is sustainable, self-sufficient, solar-powered, noiseless, and will look agreeable in the spot they have chosen, which is already licensed by the council for street trading;
- 10p from every hot drink sold will be donated to charity;
- all coffee, cakes and pastries will be locally sourced;
- where possible, recyclable materials will be used, to ensure they are as economical and environmentally friendly as possible;
- they not expect to be trading for all the times set out in the report; this will vary to suit the business year and different events in the town, probably averaging five hours a day;
- they have registered with CBC food hygiene inspectors, and are due to be rated imminently, pending tonight's outcome;
- although there are 27 businesses selling coffee in Cheltenham, a far fewer number have take-away hot drinks as their core product;

- they empathise with BID businesses, but fair competition is important. They want to support and be part of the local business community, will happily pay a voluntary levy to BID, and offer discounts to the wider business community;
- regarding the potential trip hazard, having done an event, they can confirm the horsebox complies with highways authority, council and national requirements, in addition to which an A-board can be placed over the tow bar to make it more noticeable.

He concluded by saying it is unfair to suggest that the horsebox will be in direct competition with the vast majority of BID businesses, and that this low-impact, low-fuss business will provide fair competition to any others.

Member questions

The applicants provided the following responses to Members' questions:

- selling only take-away drinks is not the USP – they want to synergise with local businesses, targeting workers who are walking past and don't want to queue up and sit down for coffee. Their USP is unique, speciality coffees in addition to the core offering;
- they are aware that there are a lot of coffee outlets in Cheltenham, but have done market research in similar towns and do not consider the market to be saturated; their business will be fair competition;
- they note no objections from the council to The Cornish Bakery, a coffee shop moving into the empty unit on the corner of Pittville Street, and will be interested to know why this isn't considered to pass the threshold when their business is, despite a very different operating model;
- they have taken the horsebox to the site at 5.30am to confirm that, with the diagonal configuration, it more than clears the requirement for people to pass, with 2.1m on the road side, and 1.9m on the building side. Pictures have been sent to the council.

The Licensing Team Leader pointed out that this location would be unsuitable during the busy race meetings in November and particularly in March, and that the police would not permit it for health and safety reasons.

The applicants said this had not been mentioned before and that the horsebox is actually smaller than The Flower Man's stall, but appreciated that it could be more hazardous at busy times and they would do whatever was needed to mitigate the risk.

A Member, interested in the opportunity for more diversity, asked officers whether there had been much interest in this site. Officers confirmed that the flower stall was there for many years, but since Covid it reduced trading hours and subsequently surrendered the site. There have not been many requests for this site, but there is no compulsion for it to be filled. The Licensing Team Leader added that he was surprised that a licenced pitch in this busy location was considered suitable, pointing out that there is a lot more awareness of accessibility issues than there used to be. He said that different locations have different requirements, depending on likely footfall and potential pinch points.

Member debate

In debate, Members considered the application against the licensing assessment criteria; the Chair started by making the following points:

- the environmental credentials seem OK – there is nothing giving cause for concern;
- the appearance is fine, though there may be challenges for accessibility around it;
- safety is a potential issue, though this could possibly be mitigated;
- there is no concern about public nuisance;
- the crux of the matter is the needs of the area, and although comparing a street trader with established retailers is not comparing like for like, the concerns here are eloquently set out in the BID objection.

Members commented as follows:

- fair competition is good, as is having a choice and supporting small traders;
- safety is a real concern, and even with suitable gaps on either side, this is a busy pavement and the tow bar could compromise the safety of wheelchair users and the visually impaired;
- will the horsebox be pitched in exactly the same position every day? Could this be conditioned? If it was parallel with the road rather than on the diagonal, there would be more space.

The applicants thanked Members for their comments, and strongly refuted their points about safety. They surveyed the area for 2.5 days and noted that the footfall is not huge, with the obvious exception of race week. An A-frame over the tow bar will make it less of a trip hazard (a picture of this was shared with Members), and they will be prepared to turn the box by 90 degrees to whichever position the committee sees fit. Regarding competition, they said again that they would be interested to understand why their proposed business raises objections while the proposed bakery/café on the corner does not, despite there being at least six bakeries in and around Cheltenham. Their business is not competing with established coffee retailers; the only truly comparable business is the Green Coffee Machine on the Promenade.

The Senior Licensing Officer pointed out that a licence would be needed for an A-board, and if allowed, it may need a condition requiring it not to include any advertising.

The applicants left the Chamber to allow Members to consider their decision in closed session.

Members' decision

The applicants were invited back and advised that the unanimous decision of the committee was to refuse their application, as it does not comply with the provisions of the street trading policy. He added that Members don't object to the idea or appearance of the stall itself or have any dispute with its environmental credentials - the location is the problem.

The reasons for refusal were given as follows:

- the needs of the area: policy states that street traders should complement or add to other businesses in the area - this test is not met, and there are already many take-away coffee vendors in the area;
- public safety: the stall narrows the pavement in a busy area, close to several bus stops, and the tow hook presents a trip hazard, particularly for the visually impaired;
- the application does not comply with the provisions of the adopted street trading policy, as stated at para 5.4 in the report.

The applicant suggested that the council should amend its policy as to where street trading is permitted, and also repeated his question as to why the bakery application has been allowed. The Licensing Team Leader explained that this is a permanent business, and is therefore a planning matter and not subject to licensing, unless it proposes the sale of alcohol or operating outside core business hours. He said licensing officers would suggest some appropriate locations for the horsebox.

4 Briefing Note

The Licensing Team Leader drew Members' attention to Tewkesbury Borough Council's consultation on taxi policy provision, which aims to raise the bar on acceptable vehicles – as of 01 January 2024, new applications will be refused if the vehicle is more than five years from its date of registration, and must be Euro 6 compliant, ULE, or electric. Renewals will be bound by the same constraints from 31 December 2025, and from 01 January 2026, applications will be refused if vehicles are not Euro 6 compliant. The provisional ambition is for all the fleet to be ULE from 2030, with renewals bound by the same criteria from 2033.

He said Members do not need to endorse these proposed changes, but they are worth considering when CBC changes its taxi policy, to ensure both councils are working in harmony. The Chair welcomed TBC's proposals as a positive move.

5 Local Government Act 1972

The Chair read the following:

That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining agenda items as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1 and 2, Part (1) Schedule (12A) Local Government Act 1972, namely:

Paragraph 1: Information relating to any individual

Paragraph 2: Information which is likely to reveal the identity of an individual

Members agreed unanimously to enter exempt session.

6 Application for a Hackney Carriage Vehicle Proprietor's Licence

After considering the case, Members decided that continuity rights should not be granted in this case.

7 Request to revert to saloon vehicle from WAV

Members considered the case in detail, and agreed to delegate authority to officers to refuse the application.

8 Review of a Hackney Carriage Driver's Licence

Councillor Harman chaired the item after Councillor Willingham left the chamber.

The Licensing Team Leader introduced the report as published.

After Member questions and debate the matter went to the vote on 1.5.1 and the result was unanimous.

9 Review of a Hackney Carriage Driver's Licence

Councillor Willingham returned to the Chamber to Chair the item.

The Licensing Team Leader introduced the report.

After Member questions and debate the matter went to the vote and the decision was made as follows:

The decision was made unanimously to suspend the licence for not less than 3 months on condition the driver completes the driving course within at least 6 months at his own expense. He can't resume driving, in the interests of public safety, until the course is completed and the certificate is provided to the licensing department

10 Any Other Items the Chairman Determines Urgent and Which Requires a Decision